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DATE: May 11, 1994
CASE NO. 92-ERA-27

IN THE MATTER OF

HARRY MURRAY,

COMPLAINANT,

v.

PROTECTION TECHNOLOGY,
A DIVISION OF DAY &
ZIMMERMANN, INC., [1]

RESPONDENT.

BEFORE: THE SECRETARY OF LABOR

FINAL ORDER APPROVING SETTLEMENT
AND DISMISSING COMPLAINT

This case arises under the employee protection provision of the Energy Reorganization Act of 1974 (ERA), as amended, 42 U.S.C. § 5851 (1988). The Administrative Law Judge issued a decision on June 22, 1992.

The parties have submitted to me a Settlement Agreement and General Release (Agreement) and seek approval of the Agreement and dismissal of the complaint. Because the request for approval is based on an agreement entered into by the parties, I must review it to determine whether the terms are a fair, adequate, and reasonable settlement of the complaint. 42 U.S.C. § 5851(b)(2)(A); *Macktal v. Secretary of Labor*, 923 F.2d 1150, 1153-54 (5th Cir. 1991); *Thompson v. United States Department of Labor*, 885 F.2d 551, 556 (9th Cir. 1989); *Fuchko and Yunker v. Georgia Power Co.*, Case Nos. 89-ERA-9, 89-ERA-10, Sec. Order, Mar. 23, 1989, slip op. at 1-2.

The Agreement appears to encompass the settlement of matters arising under various laws, only one of which is the ERA. See

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Par. 4(a). For the reasons set forth in *Poulos v. Ambassador Fuel Oil Co., Inc.*, Case No. 86-CAA-1, Sec. Ord., Nov. 2,

1987, slip op. at 2, I have limited my review of the Agreement to determining whether its terms are a fair, adequate and reasonable settlement of Complainant's allegations that Respondent violated the ERA.

Paragraph 9 provides that the parties shall keep the Agreement confidential and shall not disclose its terms "except as required by law or as necessary to enforce or implement this agreement." The parties' submissions, including settlement agreements, become part of the record in the case and the Freedom of Information Act (FOIA), 5 U.S.C. § 552 (1988), requires federal agencies to disclose requested records unless they are exempt from disclosure under the Act. [2] See *Debose v. Carolina Power & Light Co.*, Case No. 92-ERA-14, Order Disapproving Settlement and Remanding Case, Feb. 7, 1994, slip op. at 2-3 and cases there cited.

Paragraph 10 provides that "Murray agrees that in the future he will make no derogatory or disparaging statements, remarks, or communications whatsoever regarding PTI [Respondent], PECO [PECO Energy Co.], and their respective affiliates, subsidiaries, and management personnel." I interpret this language as not preventing Complainant, either voluntarily or pursuant to an order or subpoena, from communicating with, or providing information to, state and Federal government agencies about suspected violations of law involving Respondent. See *Corder v. Bechtel Energy Corp.*, Sec. Order, Feb. 9, 1994, slip op. at 6-8 (finding void as contrary to public policy a settlement agreement provision prohibiting the complainant from communicating with federal or state agencies concerning possible violations of law). Under Paragraph 13, the parties have provided that the Agreement is governed by the laws of Pennsylvania. I interpret this statement as not limiting the authority of the Secretary of Labor or a Federal court under the ERA and implementing regulations. See *Phillips v. Citizens Ass'n for Sound Energy*, Case No. 91-ERA-25, Final Order of Dismissal, Nov. 4, 1991, slip op. at 2.

I find that the agreement, as here construed, is a fair, adequate, and reasonable settlement of the complaint. Accordingly, I approve the agreement and DISMISS the complaint with prejudice. Agreement Par. 4c.

SO ORDERED.

ROBERT B. REICH
Secretary of Labor

Washington, D.C.

[ENDNOTES]

[1] The spelling of Zimmermann in the caption of the case is corrected.

[2] Pursuant to 29 C.F.R. § 70.26(b), submitters may designate specific information as confidential commercial information to be handled as provided in the regulations. When FOIA requests are received for such information, the Department of Labor will notify the submitter promptly, 29 C.F.R. §

70.26(c), the submitter will be given a reasonable period of time to state its objections to disclosure, 29 C.F.R. § 70.26(e), and the submitter will be notified if a decision is made to disclose the information. 29 C.F.R. § 70.26(f). If the information is withheld and suit is filed by the requester to compel disclosure, the submitter will be notified. 29 C.F.R. § 70.26(h).